

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

# PCT

**Translation**

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing  
(day/month/year)

Applicant's or agent's file reference

**sh 14/WO M**

**FOR FURTHER ACTION**

See paragraph 2 below

International application No.

**PCT/DE2004/001050**

International filing date (day/month/year)

**14.05.2004**

Priority date (day/month/year)

**14.05.2003**

International Patent Classification (IPC) or both national classification and IPC

Applicant

**SCHMIDT & HAENSCH GMBH & CO.**

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

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Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing  
☐ contained in the international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II

Priority

1. ☒ The following document has not yet been furnished:
- ☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
  - ☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).
- Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	2-13	YES
	Claims	1	NO
Inventive step (IS)	Claims		YES
	Claims	1-13	NO
Industrial applicability (IA)	Claims	1-13	YES
	Claims		NO

2. Citations and explanations:

1. This report mentions the following documents (D) cited in the search report; the same numbering will be used throughout the procedure:

D1: US-A-5 309 214

D2: EP-A-0 283 426

D3: EP-A-1 096 247

D4: FR-A-2 578 978

2. INDEPENDENT CLAIM 1

The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 is not novel under PCT Article 33(2). Document D1 discloses (the references in parentheses relate to said document) all of the features corresponding to claim 1, for example the following:

a refractometer comprising measuring vee 12; sample 13 can be illuminated such that the range even includes the critical angle of total reflection (column 5, lines 55, 56); a plurality of discrete light sources 1, 2 that can be activated either

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

individually (column 7, lines 46, 47) or jointly  
(column 5, lines 67, 68), their radiation 10 being  
bundled in one point 11 and guided onto the  
refractometer.

3. Dependent claims 2-13 concern only minor structural  
modifications to the apparatus according to claim 1  
of the kind that a person skilled in the art  
routinely makes on the basis of familiar  
considerations (cf. also the documents cited in the  
search report), especially since the resulting  
advantages are readily foreseeable.  
These claims therefore do not contain any features  
which, in combination with the features of any claim  
to which they refer back, meet the PCT requirements  
for novelty or inventive step.